

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY KUALA LUMPUR PRIORITY

C O N F I D E N T I A L STATE 082188

E.O. 11652: GDS

TAGS: ENRG, MY

SUBJECT: NEW LEGISLATION AFFECTING PETROLEUM DISTRIBUTORS

REF: (A) KUALA LUMPUR 1860; (B) KUALA LUMPUR 1862.

1. MOBIL AND ESSO HAVE BOTH EXPRESSED TO DEPT THEIR DEEP CONCERN OVER PETROLEUM ACT AMENDMENT, CONFIRMING THAT BY THEIR CALCULATIONS IT WILL HAVE EFFECT OF NATIONALIZING THEIR MALAYSIAN PROPERTIES. WE UNDERSTAND SENIOR ESSO EXECUTIVE IS EN ROUTE TO KUALA LUMPUR TO DISCUSS MATTER WITH GOM. COMPANIES HAVE REQUESTED SUPPORT FROM USG IN PRESENTING THEIR VIEWS TO GOM.

2. LEGAL ADVISOR'S OFFICE IS REVIEWING TEXT OF AMENDMENT IN CONTEXT POSSIBLE APPLICABILITY OF PERTINENT U.S. LEGISLATION ON NATIONALIZATION OF ASSETS OF U.S. CITIZENS. WILL ADVISE YOU OF CONCLUSIONS. FYI: DEVICE OF QTE MANAGEMENT SHARES UNQTE HAS BEEN USED IN PAST BY SEVERAL COUNTRIES TO TAKE CONTROL OF PETROLEUM DISTRIBUTORS. WE WONDER IF MALAYSIANS MAY HAVE LEARNED OF IT FROM THEIR INDONESIAN PERTAMINA ADVISORS.

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3. UNLESS YOU PERCEIVE OBJECTION, REQUEST YOU APPROACH GOM AT APPROPRIATELY HIGH LEVEL ALONG LINES SUGGESTED

PARA THREE REF A. AT YOUR DISCRETION FOLLOWING POINTS SHOULD BE MADE:

A. U.S. IS SURPRISED THAT GOM HAS UNDERTAKEN THIS MOVE WHICH, IN OUR VIEW, IS BOUND TO HAVE SERIOUSLY ADVERSE EFFECT ON OVERALL INVESTMENT CLIMATE FOR FOREIGN COMPANIES IN MALAYSIA. WE WONDER WHAT GOM'S OBJECTIVES ARE IN BRINGING FORTH THIS LEGISLATION AND WHETHER IT SIGNIFIES SHIFT IN OVERALL GOM ATTITUDE TOWARD FOREIGN PRIVATE INVESTMENT.

B. U.S. FIRMS ENGAGED IN PETROLEUM MARKETING AND DISTRIBUTION HAVE CALCULATED THAT NEW AMENDMENT WILL RESULT IN TRANSFER OF EFFECTIVE CONTROL OF THEIR MALAYSIAN OPERATIONS TO PETRONAS. THIS AUTOMATICALLY MAKES MATTER ONE OF SPECIFIC CONCERN TO USG BECAUSE IT REQUIRES US TO CONSIDER APPLICABILITY OF EXISTING U.S. LAWS RELATING TO NATIONALIZATION OF ASSETS OF U.S. CITIZENS. WE HAVE NOT YET REACHED CONCLUSION AS TO APPLICABILITY U.S. LAWS IN THIS INSTANCE, BUT WE MAY HAVE TO DRAW ATTENTION OF GOM FORMALLY TO THIS ASPECT OF MATTER IF OUR CONCLUSIONS CONFIRM THIS INTERPRETATION.

C. WE ARE ESPECIALLY INTERESTED IN GOM PLANS FOR IMPLEMENTING THIS AMENDMENT. WE NOTE, FOR EXAMPLE, THAT PRIMIN MAY EXEMPT ANY COMPANY OR CLASS OF COMPANIES FROM ITS PROVISIONS. WILL HE BE EXERCISING THIS PREROGATIVE? KISSINGER

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